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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN MATEO

NAME(S),  
Plaintiff(s),  
v.  
NAME(S), and DOES 1-50, inclusive,  
Defendants.

Case No.: \_\_\_\_\_  
Assigned for all purposes to the  
Hon. David A. Silberman, Department 11  
**PRETRIAL ORDER NO. 1**  
MSC Date: \_\_\_\_\_  
Trial Date: \_\_\_\_\_  
Pretrial Conf.: \_\_\_\_\_  
Action Filed: \_\_\_\_\_

WHEREAS the Court wishes to ensure that the Court, the parties, and the witnesses in all civil cases are prepared to begin the trial on the actual date that the trial is scheduled; and

WHEREAS the Court wishes to establish clear and uniform requirements for pretrial conferences and trials in all civil cases;

Pursuant to the Court's inherent authority, IT IS HEREBY ORDERED THAT:

1 **INTRODUCTION**

2 1. A summary of the deadlines established by this order is provided below:

3 **SUMMARY TABLE OF DEADLINES**

<b>EVENT</b>	<b>DEADLINE</b>
Serve (but <i>not</i> file): 1. Proposed motions in limine; 2. Proposed jury instructions; 3. Proposed verdict form(s); 4. Proposed witness lists; and 5. Proposed exhibit lists	At least 42 days before the Pretrial Conference
Meet and confer regarding pretrial conference – including motions in limine, proposed jury instructions, proposed juror questionnaire (if any), proposed verdict forms, proposed statement of the case, and witness and exhibit lists	At least 35 days before the Pretrial Conference
File and serve motions in limine and oppositions to motions in limine	At least 21 days before the Pretrial Conference
Parties must file joint pretrial conference statement, and provide to the Court one <b>(1) set of BINDERS NO MORE THAN 2½ INCHES WIDE</b> – with the following: 1. Proposed jury instructions; 2. Proposed verdict form(s); 3. Proposed voir dire and juror questionnaire (if any); 4. Proposed statement of the case; 5. Witness lists; 6. Exhibit lists, including any disputed exhibits; 7. Motions in limine, oppositions, and supporting declarations or requests for judicial notice; and 8. Deposition designations and objections	At least 14 days before the Pretrial Conference
Pretrial Conference will be held	At least 14 days before the Trial Date
Deliver to the Court <i>at least three (3) sets</i> of trial exhibits in <b>BINDERS NO MORE THAN 2½ INCHES WIDE</b> – and on a thumb drive	At least 14 days before the Trial Date



1 support all oppositions to motions in limine. The parties need not include a copy of the operative  
2 complaint.

3 9. Each party must also submit a hard copy and a Word version of all proposed orders.  
4 Each proposed order must provide enough specificity that a witness will be able to understand what  
5 testimony is prohibited.

6 10. The motions will be heard at the Pretrial Conference or at such other time as the Court  
7 may direct.

### 8 JURY INSTRUCTIONS

9 11. The parties shall file a *joint* set of proposed jury instructions, arranged in the order the  
10 parties propose the Court give the instructions, with the Joint Pretrial Conference Statement. The  
11 parties must include copies of the actual instructions and **NOT** merely a list of instruction numbers.

12 12. The parties are invited to use the Judicial Council of California Civil Jury Instructions  
13 (CACI). Any modifications made to a form instruction must be plainly identified.

14 13. The Court will give copies of the final instructions to the jury to review during  
15 deliberations. There, the parties are **not** to include headings indicating which party requested the  
16 instruction, or whether the instruction was given as proposed, modified, or rejected. Rather the top of  
17 the first page of each instruction should include only the CACI number and title. The footer may  
18 include the case name and number and page number.

19 14. Instructions upon which the parties agree shall be identified as “Stipulated Instruction  
20 No. \_\_\_ Re: \_\_\_\_\_,” with blanks filled in as appropriate.

21 15. If the parties disagree on an instruction, each party’s proposed version of the disputed  
22 instruction shall be provided and identified as “Disputed Instruction No. \_\_\_ Re: \_\_\_\_\_ Offered by  
23 \_\_\_\_\_,” with blanks filled in as appropriate. All proposed versions of the same instruction shall  
24 bear the same number. Following each disputed instruction, each party shall explain, in no more than  
25 one page, why the Court should give that party’s proposed instruction or why the instruction should or  
26 should not be given.



- 1 a. Name of the witness;
- 2 b. Title of the witness, if any;
- 3 c. Brief description of the subject matter of the witness' anticipated testimony; and
- 4 d. Estimated length of the direct examination, cross-examination, and any redirect, and
- 5 cross-redirect.
- 6 e. The parties shall also submit their deposition designations and objections with the Joint
- 7 Pretrial Conference Statement. The parties must submit copies of the excerpts of the
- 8 designated portions of the deposition transcripts, **NOT** a list of page and line
- 9 numbers.
- 10 f. The parties must jointly submit one binder with a joint pleading that has the
- 11 designations, objections and responses followed by tabs for each witness with the
- 12 designation highlighted in yellow and any objections bracketed in red. The
- 13 designating party shall provide the opposing parties the designation(s) and
- 14 highlighted sections two weeks before the statement is due. The parties shall then
- 15 meet-and-confer about any objections at least five days before the binder is due.
- 16 Unless a party can demonstrate good cause, the deposition of each witness shall be
- 17 introduced only once, *i.e.*, all parties' designations will be presented together rather
- 18 than in each party's case.

19 24. Any witness who is not identified on a party's witness list is subject to exclusion in the

20 reasonable exercise of the Court's discretion.

21 **TRIAL EXHIBITS**

22 25. Each trial exhibit must be clearly pre-marked with the trial exhibit number. The back of

23 the last page of each trial exhibit must include the completed Court exhibit tag. (See Appendix A.)

24 The trial exhibit list must begin with the plaintiff's first exhibit number. Defendant's exhibit numbers

25 must be sequenced to begin after the plaintiff's exhibit numbers. **DO NOT** identify the exhibits as

26 plaintiff's or defendant's.

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1           26. Exhibits shall be numbered. **NO** letters may be used. Neither party shall use letters —  
2 e.g., the exhibits must be numbered 1, 2, 3, **NOT** 1(a), 1(b), 1(c). The parties must agree on a block of  
3 numbers to fit the needs of the case (e.g., the plaintiff has exhibits 1-100; the defendant has exhibits  
4 101-200), and make a good faith effort to avoid marking the same exhibit in their respective blocks. If  
5 the exact same exhibit is marked by more than one party, then the defendant shall withdraw the  
6 duplicative exhibit (but should not renumber its portion of the exhibit list). If there is any dispute over  
7 which portions of an overlapping exhibit should be introduced into evidence, the parties shall meet and  
8 confer in an attempt to informally resolve the issue. If the parties are unable to informally resolve the  
9 dispute, then each party shall submit its disputed exhibit with the Joint Pretrial Conference Statement  
10 and explain, in no more than one double-spaced page, why the Court should use its proposed exhibit.

11           27. To avoid any party claiming “ownership” of an exhibit, all exhibits shall be marked and  
12 referred to as “Trial Exhibit No. \_\_\_” – and **NOT** as “Plaintiff’s Exhibit” or “Defendant’s Exhibit.”

13           28. The parties must file a joint exhibit list identifying all the exhibits that the party intends  
14 to introduce at trial with the Joint Pretrial Conference Statement.

15           29. The joint exhibit list must be in tabular form and contain the following:

- 16           a. Exhibit number;
- 17           b. Brief description of the exhibit (with any bates numbers if they exist);
- 18           c. Sponsoring witness;
- 19           d. Date marked for identification (left blank); and
- 20           e. Date admitted into evidence (left blank).

21           30. Each party must provide the Court with at least three (3) complete sets of hard copy  
22 exhibits in tabbed ***BINDERS NO MORE THAN 2½ INCHES WIDE*** that the party intends to  
23 introduce at trial and one (1) complete set of exhibits on a thumb drive at least fourteen (14) days  
24 before the Trial Date. The binders **MUST NOT** be identified as “plaintiff’s exhibits” or “defendant’s  
25 exhibits.” Each party will be expected to place the official exhibit tag on the back of the last page of  
26 each document; the exhibit tags may be obtained from the courtroom clerk, or the parties may copy the  
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1 template at Appendix A. The Court may require additional copies of those exhibits for trial, including  
2 separate exhibit binders for each witness.

3 31. Any exhibit that is not identified on a party's exhibit list is subject to exclusion in the  
4 reasonable exercise of the Court's discretion.

#### 5 MEET AND CONFER

6 32. At least forty-two (42) days before the Pretrial Conference each party must serve on all  
7 other parties (but NOT file) its proposed motions in limine, proposed jury instructions, proposed verdict  
8 form(s), proposed witness list, and proposed exhibit list. Anything that is not included in these served  
9 documents – i.e., motions in limine, witnesses, or exhibits – may be subject to denial or exclusion in the  
10 reasonable exercise of the Court's discretion.

11 33. All parties must meet and confer regarding motions in limine, jury instructions, verdict  
12 form(s), jury questionnaire (if any), a statement of the case, witness and exhibit lists, a pretrial  
13 conference statement (if required), and any other issues that may arise at trial no later than thirty-five  
14 (35) days before the Pretrial Conference. ***The meet and confer must take place in person or by***  
15 ***videoconference.*** If the parties wish to meet and confer by telephone, they must obtain permission  
16 from the Court. The Court expects meaningful meet and confer in accordance with The Court expects  
17 meaningful meet and confer in accordance with California Attorney Guidelines of Civility and  
18 Professionalism available at [https://www.calbar.ca.gov/legal-professionals/ethics-compliance-practice-](https://www.calbar.ca.gov/legal-professionals/ethics-compliance-practice-resources/ethics/attorney-civility-and-professionalism)  
19 [resources/ethics/attorney-civility-and-professionalism.](https://www.calbar.ca.gov/legal-professionals/ethics-compliance-practice-resources/ethics/attorney-civility-and-professionalism)

20 34. During the meet and confer, the parties must engage in a good faith effort to:

- 21 a. Resolve any issues raised in the motions in limine;
  - 22 b. Resolve any disputes over the jury instructions;
  - 23 c. Resolve any disputes over the verdict form(s);
  - 24 d. Agree on a proposed jury questionnaire (if any);
  - 25 e. Agree on a proposed statement of the case to be read to the jury during voir dire;
  - 26 f. Resolve any disagreements re witnesses and exhibits to be introduced at trial; and
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1 g. Stipulate to any relevant facts that can be incorporated into the record without  
2 supporting testimony or exhibits.

3 35. Wherever possible, the parties shall stipulate to the admissibility of any exhibits. If a  
4 stipulation is not possible, then the parties shall make every effort to stipulate to the authenticity and  
5 foundation for an exhibit absent a legitimate objection.

6 **PRETRIAL CONFERENCE STATEMENT**

7 36. The parties shall e-file with the Court a Joint Pretrial Conference Statement at least  
8 fourteen (14) days before the Pretrial Conference that contains the following:

- 9 a. Substance of the Action: A brief description of the parties, the claims and defenses  
10 that remain to be decided (including whether any issues are for the Court to decide  
11 rather than the jury), and the operative pleading, including the date of filing, that  
12 raises these claims and defenses.
- 13 b. Relief Requested: A detailed statement of all requested relief that itemizes all  
14 elements of damages that are claimed.
- 15 c. Undisputed Facts: A plain and concise statement of all relevant facts to which the  
16 parties will stipulate for incorporation into the record without supporting testimony  
17 or exhibits or that are undisputed.
- 18 d. Settlement Discussions: A brief description of the efforts the parties have made to  
19 settle the case and a brief statement about whether the parties believe that further  
20 negotiations are likely to be productive and what, if anything, would facilitate  
21 settlement.
- 22 e. Estimate of Trial Length: An estimate of the number hours needed for the  
23 presentation of each party's case.
- 24 f. Miscellaneous: Any other matters that will facilitate the just, speedy, and efficient  
25 resolution of the case.

26 37. The parties shall include the following documents in accordance with this order with  
27 their Joint Pretrial Conference Statement and provide courtesy copies to the Court delivered between  
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1 the hours of 9:00 a.m. and 4:00 p.m. to the Central Courthouse, Department 11, Courtroom G, 800  
2 North Humboldt St., San Mateo, California 94401:

- 3 a. Proposed jury instructions;
- 4 b. Proposed verdict form(s);
- 5 c. Proposed jury questionnaire (if any);
- 6 d. Proposed statement of the case;
- 7 e. Joint witness list;
- 8 f. Joint deposition designation binders (see paragraph 22(e), above);
- 9 g. Joint exhibit list, including any disputed exhibits; and
- 10 h. Binders containing the party's motions in limine, any oppositions, and any  
11 supporting declarations or requests for judicial notice in support of or in opposition  
12 to the motions.

13 38. The parties must also email the proposed jury instructions, proposed verdict form(s),  
14 proposed jury questionnaire (if any), proposed statement of the case, and proposed orders in **Word**  
15 **format** to the Court at [dept11@sanmateocourt.org](mailto:dept11@sanmateocourt.org).

#### 16 PRETRIAL CONFERENCE

17 39. A Pretrial Conference is scheduled for \_\_\_\_\_, 202\_ at 10:00 a.m. **Lead trial**  
18 **counsel for each party must attend in person.**

19 40. **The Pretrial Conference is deemed to be the commencement of trial for all**  
20 **purposes**, including but not limited to discovery and motion cutoff, disclosure of witnesses and expert  
21 witnesses, and commencement of all trial-related fees, such as jury and court reporter fees.

22 41. At the Pretrial Conference, each party should be prepared to argue and discuss:

- 23 a. Motions in limine;
- 24 b. Jury instructions;
- 25 c. Voir dire;
- 26 d. Jury questionnaire (if any);
- 27 e. Verdict form(s);

- f. Proposed statement of the case;
- g. Witnesses, including objections to deposition designations;
- h. Exhibits;
- i. Stipulations; and
- j. Any other issues relating to the trial.

**TRIAL**

42. An in-person jury trial is set for \_\_\_\_\_, 202\_ at 9:00 a.m. and will occur on Tuesdays, Wednesdays, and Fridays, and such other days as set by the Court. The intent is that jury selection will begin on \_\_\_\_\_, 202\_.

43. A Mandatory Settlement Conference is set for \_\_\_\_\_, 202\_ with a judge to be determined. **PLEASE NOTE:** the MSC date may change, depending on which judge is assigned to hear the MSC. The clerk of the assigned judge’s department will contact you with the information concerning the date and time of the MSC, as well as whether it will be held in person or remotely, approximately a week in advance.

44. Once the trial begins, each party shall inform the other parties by 4:00 p.m. *the prior business day* of the identity of witnesses that the party anticipates presenting at trial the next court day, regardless of whether the witness will be presented live (including by remote technology), by video deposition, or through a deposition transcript.

45. The purpose of this Order is to have the case ready for trial so that the jury can be selected on the first day set for jury trial and that trial proceed as efficiently as possible. If the parties wish to modify the schedule because of the specific facts of their case, they may do so. If they wish to change any of the dates that documents are due to the Court, they should submit a proposed order specifying the reasons why they want to change the deadlines. The Court needs sufficient time to review the submissions. Therefore, the Court suggests that if the parties seek to change a deadline of when documents are submitted to the Court, they only seek to extend the deadlines for specific documents. For example, if there is an issue regarding certain expert(s), the parties should seek to only seek to extend the deadline to file and oppose the specific expert motion(s) in limine and then file the

1 other motions in limine based on the deadlines set in this Order. For further information about the  
2 procedures in Judge Silberman’s courtroom, look at his webpage at  
3 [https://www.sanmateocourt.org/court\\_divisions/civil/dept11.php](https://www.sanmateocourt.org/court_divisions/civil/dept11.php).

4 46. If counsel or any staff members have questions about these procedures, please email  
5 Department 11 at [dept11@sanmateocourt.org](mailto:dept11@sanmateocourt.org) and include counsel for all represented parties and pro  
6 per parties in the email.

7 **COURT REPORTERS**

8 47. The Court has changed its policy regarding providing court reporters for Pretrial  
9 Conferences and Trials. Check Judge Silberman’s webpage and the Court’s website for further  
10 information.

11  
12 Dated: \_\_\_\_\_

13 \_\_\_\_\_  
14 DAVID A. SILBERMAN  
15 Judge of the Superior Court  
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**APPENDIX A**

**The tag must be attached to the back of the last page of each exhibit**

**EXHIBIT:** \_\_\_\_\_

**Case Number:** \_\_\_\_\_

Marked \_\_\_\_\_

Identified \_\_\_\_\_

Admitted \_\_\_\_\_

**By:** \_\_\_\_\_

Clerk of the Superior Court